

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AMERICAN GENERAL LIFE
INSURANCE COMPANY,**

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Plaintiff,

C. A. NO. H-05-1268

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**ANTHONY MERCIER, SR., ANTHONY
MERCIER, JR., CHARLES MERCIER,
and MERCIER INSURANCE
AGENCY, INC.,**

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Defendants.

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MOTION FOR DEFAULT JUDGMENT AND REQUEST FOR ORAL HEARING

Plaintiff American General Life Insurance Company ("Plaintiff") files this Motion for Default Judgment against defendants Anthony Mercier, Senior, Anthony Mercier, Junior, and Charles Mercier, principals of Mercier Insurance Agency, Inc. (collectively "Defendants") as follows.

1. Plaintiff moves this Court for entry of a default judgment against Defendants under Rule 55(b)(2) of the Federal Rules of Civil Procedure.
 2. The Court entered the default of Defendants on January 4, 2007.
 3. Defendants have not taken any action since the entry of default.
 4. Plaintiff's Original Complaint in this action sets out a valid claim for breach of contract, breach of fiduciary duty, common law fraud, conspiracy, negligent misrepresentation and civil RICO violations. By virtue of the default, Defendants may not challenge any of the factual allegations supporting Plaintiff's claims.

5. Plaintiff requests an oral hearing to establish the terms of relief sought and its damages. As supported by the Affidavit of James W. Caldwell attached as Exhibit A and incorporated herein in its entirety, Defendants are not minors, nor incompetent persons.

6. For these reasons, Plaintiff American General Life Insurance Company respectfully requests that the Court enter a default judgment against Defendants and set a hearing on its damages and to establish the amount of the judgment and for such other and further relief the Court may deem it justly entitled.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: DAVID McDowell/jwc
David McDowell
Southern District Bar No. 18464
State Bar No. 00791222

Attorney-In-Charge
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711 Louisiana, Suite 2300
Houston, Texas 77002
(713) 223-2300 (Telephone)
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OF COUNSEL:

James W. Caldwell
State Bar No. 24031786
Federal ID No. 32125

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711 Louisiana, Suite 2300
Houston, Texas 77002
(713) 223-2300 (Telephone)
(713) 221-1212 (Telecopier)

ATTORNEYS FOR PLAINTIFF AMERICAN
GENERAL LIFE INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by Certified Mail/Return Receipt Requested on this the 8th day of January, 2007 as follows:

Anthony Mercier, Jr.
c/o Anthony Mercier Sr.
P. O. Box 1506
Augusta, Georgia 30903;

Anthony Mercier, Jr.
c/o Anthony Mercier Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Anthony Mercier, Jr.
c/o Anthony Mercier Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824

Charles Mercier
c/o Anthony Mercier Sr.
P. O. Box 1506
Augusta, Georgia 30903;

Charles Mercier
c/o Anthony Mercier Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Charles Mercier
c/o Anthony Mercier Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824

Anthony Mercier, Sr.
P. O. Box 1506
Augusta, Georgia 30903

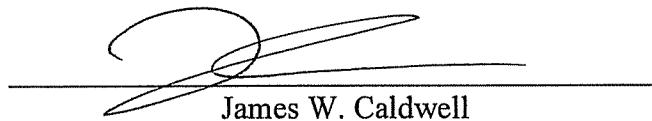
Anthony Mercier, Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Anthony Mercier, Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824

Mercier Insurance Agency, Inc.
c/o Anthony Mercier, Sr.
P. O. Box 1506
Augusta, Georgia 30903

Mercier Insurance Agency, Inc.
c/o Anthony Mercier, Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Mercier Insurance Agency, Inc.
c/o Anthony Mercier, Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824



James W. Caldwell

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AMERICAN GENERAL LIFE
INSURANCE COMPANY,**

Plaintiff,

V.

C. A. NO. H-05-1268

**ANTHONY MERCIER, SR., ANTHONY
MERCIER, JR., CHARLES MERCIER,
and MERCIER INSURANCE
AGENCY, INC.,**

Defendants.

AFFIDAVIT OF JAMES W. CALDWELL

STATE OF TEXAS

COUNTY OF HARRIS §

I, James W. Caldwell, declare and state:

1. I am over the age of twenty-one (21) years of age and am fully competent to make this declaration. I am a duly authorized agent of the Plaintiff and have personal knowledge of the facts set forth in this declaration and they are true and correct.

2. I am an attorney licensed to practice law in the State of Texas and before the Southern District of Texas. I represent American General Life Insurance Company in the United States District Court for the lawsuit styled C.A. No. H-05-1268; *American General Life Insurance Company v. Anthony Mercier, Sr., et al.*; In the United States District Court for the Southern District of Texas, Houston Division.

3. American General filed Plaintiff's Original Complaint ("Complaint") on April 14, 2005. Defendants filed Defendants' Motion to Dismiss pursuant to Rule 12(b)(2) or Rule 12(b)(3) and Memorandum of Authorities on May 16, 2005 ("Motion to Dismiss"). On May 25, 2005 Defendants filed Defendants' Motion to Transfer Venue pursuant to 28 U.S.C § 1404(a) and Memorandum of Authorities ("Motion to Transfer"). Defendants did not file an answer to American General's Complaint subject to its Motion to Dismiss or Motion to Transfer.

4. On January 24, 2006, the Court granted the parties' Agreed Motion to Stay and denied Defendants' Motion to Dismiss and Motion to Transfer without prejudice to reurge the Motions. On April 21, 2006 the Court lifted the stay and re-opened this matter. The same day,

Defendants re-filed Defendants' Motion to Dismiss and Motion to Transfer. Once again, Defendants did not file an answer to American General's Complaint subject to either Motion.

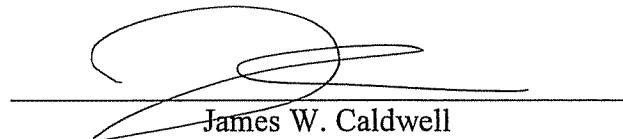
5. On July 10, 2006, the Court denied Defendants' Motion to Dismiss and Motion to Transfer.

6. Since the Court denied Defendants' Motions, Defendants have not responded to Plaintiff's Original Complaint in accordance with Federal Rule of Civil Procedure 12(a)(4)(A).

7. With reference to the matter in issue in the above cause, I have corresponded with former counsel for Defendants in the past and prior to his withdrawal and I am convinced that Defendants are not in the military service of the United States at this time or infants or incompetent.

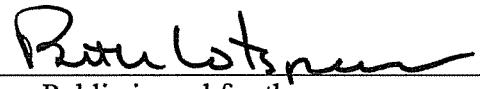
8. This Affidavit is executed in accordance with Rule 55 of the Federal Rules of Civil Procedure, for the purpose of enabling the Plaintiff to obtain an entry of default and default judgment against Defendants, for their failure to respond to Plaintiff's Original Complaint within the time period prescribed in Federal Rule of Civil Procedure 12(a)(4)(A).

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 8th day of January, 2007.



James W. Caldwell

SWORN TO and SUBSCRIBED before me on the 8th day of January, 2007.



Beth Lotspeich

Notary Public in and for the
State of Texas



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AMERICAN GENERAL LIFE
INSURANCE COMPANY,**

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Plaintiff,

C. A. NO. H-05-1268

**ANTHONY MERCIER, SENIOR,
ANTHONY MERCIER, JUNIOR,
CHARLES MERCIER, and MERCIER
INSURANCE
AGENCY, INC.,**

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Defendants.

**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT
AND NOTICE OF HEARING**

On this date the Court considered Plaintiff's Motion for Default Judgment in the above-referenced matter. The Court, having reviewed the Motion and the papers in the cause, is of the opinion that it should in all things be GRANTED.

THEREFORE, it is ORDERED that a default judgment is entered against Defendants and a hearing is set for _____, 2007 to hear evidence on Plaintiff American General Life Insurance Company's damages and to establish the amount of the judgment.

Signed this _____ day of _____, 2007.

HONORABLE GRAY MILLER
UNITED STATES DISTRICT JUDGE